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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 963—CERTIORARI
No. 716—MISC.—MANDAMUS

HENRY MERRITT FARNUM,

Petitioner,

against

STATE OF CONNECTICUT

and

NEW YORK STATE DEPARTMENT OF MENTAL HYGIENE,

Appellees.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI AND PETITION FOR WRIT OF MANDAMUS

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May 8, 1958

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In The

Supreme Court of the United States

October Term, 1957

No. 963—Certiorari
No. 716—Misc.—Mandamus

Henry Merritt Farnum,

Petitioner,

against

State of Connecticut

and

New York State Department of Mental Hygiene,

Appellees.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI AND PETITION FOR WRIT OF MANDAMUS

The appellee opposes the petitioner's motions for leave to file a petition for a writ of certiorari and mandamus. United States District Court Judge Sylvester J. Ryan, Southern District of New York, on November 7, 1957, denied petitioner's motions made pursuant to 28 U.S.C. §§ 2281 and 2284 for the appointment of a three-judge court and for a declaratory judgment and injunctive relief, and dismissed the complaint.

Statutes Involved

1. Federal Statutes 28 U.S.C. §§ 2281 and 2284. The District Court denied petitioner's motions, made under these sections for the appointment of a three-judge court to enjoin the enforcement of a New York statute.

2. Federal Statutes

Civil Rights Statutes, 28 U.S.C. § 1343 as amended September 9, 1957. 42 U.S.C. §§ 1983, 1985. Fourteenth Amendment to the Constitution of the United States.

3. New York Statute

Section 34 of Article 3 of the New York Mental Hygiene Law relates to the powers and duties of the directors of state mental hospitals and Section 20 of Article 2 to the Record of patients and inmates. The Articles may be found in convenient form in McKinney's Consolidated Laws of New York Book 34-A.

The Order Below

The order of the United States District Court, Southern District (RYAN, D. J.,) November 7, 1957, in respect to which the writs are sought, determined that the challenged section of the State Mental Hygiene Law, which provides that records of patients shall be available only to the Director of the hospital and his designees and to the Commissioner and his representatives "except on the consent of the Commissioner or an order of a judge of a Court of Record", was not unconstitutional. Judge RYAN found that "This section does not operate to deprive either plaintiff or anyone else of constitutionally protected rights. There is no allegation that plaintiff has exhausted his available State administrative or judicial remedies". Judgment was entered dismissing the complaint on November 8, 1957.

The respondent's motion to dismiss the complaint and for denial of the application to convene a three-judge court was made on the grounds that the complaint failed to state a claim for relief; and on the further ground that the court lacked jurisdiction over the subject matter and the defendant.

Questions Presented

The petitioner seeks to present these questions:

1. Whether the District Judge erred in denying petitioner's motion to convene a three-judge court, in denying the motion for a declaratory judgment and injunctive relief, and in granting the motion of the respondent to dismiss the complaint.

2. Whether a substantial federal question was presented by petitioner's challenge to the constitutionality of sections 20 and 34 subdivision 9 of the New York Mental Hygiene Law, as applied to the petitioner.

Statement

The complaint, stating that petitioner (who resides in New York City) acts on his own behalf and also for all other persons similarily situated, arises under the Civil Rights Act as amended September 3, 1954, September 9, 1957; 28 U.S.C. Section 1343 and 42 U.S.C. Sections 1983, 1985 and other statutes. The complaint alleges in substance that: (*a*) for fourteen months from December, 1955 to February 15, 1957, plaintiff was confined in Manhattan State Hospital; (*b*) plaintiff was discharged from "convalescent care" July 25, 1957; (*c*) after that discharge, plaintiff requested opportunity to examine and to receive complete transcripts of the records, files and all other material relating to his confinement, and periods

subsequent thereto; (*d*) the refusal to transmit the requested records; (*e*) those requests were made by certified letters to the defendant and no part of them was offered; (*f*) that the orders by defendant to withhold from plaintiff the facts of record now secret, deprives plaintiff of liberty and property without due process of law and of other rights, privileges and immunities secured by the Constitution of the United States and by acts of Congress providing for equal rights of citizens, plaintiff accordingly prayed for:

(1) A permanent injunction against all orders by defendant withholding the requested records and

(2) A declaratory judgment determining the unconstitutionality and illegality of such orders by defendant.

ARGUMENT

No substantial federal question is presented by the motion for leave to file a petition for a writ of mandamus and certiorari.

1.

In *Matter of Warrington (State of New York)*, 303 N. Y. 129, 140 (1951), it was held "Upon that subject legislative history makes it clear that since 1896 the Legislature has been quite willing to leave to the discretion of 'a judge of a court of record' the inquiry whether the end to be achieved in a given case justifies the means afforded by the provisions of the Mental Hygiene Law cited above." (Mental Hygiene Law § 20, 34 subd. 9.) See also, *Matter of Lee* v. *State of New York*, 183 Misc. 615; Opinions of Attorney General 1944 page 288.

2.

The specific wrong alleged to be suffered by petitioner in violation of his constitutional and civil rights is the failure of the respondent to release to him (immediately and without Court order) all the records and reports relating to his commitment and confinement in the State Mental Hospital. Petitioner's contention is that Sections 20 and 34, subd. 9 of the State Mental Hygiene Law are basically unconstitutional. Petitioner broadly asserts that he was denied the equal protection of the law and equal privileges and immunities under the law, in violation of the Fourteenth Amendment and the Civil Rights Act. The pleaded facts belie this conclusion. The complaint is void of allegations that the purpose of the alleged refusal of the respondent, Department of Mental Hygiene or its director was to dicriminate between persons or classes of persons or that the Department's action was grounded in conspiracy. *Snowden* v. *Hughes,* 321 U. S. 1, 5, 8; rehearing denied 321 U. S. 804. Any claim, under § 1985 of the Civil Rights Act that a denial of equal protection of the law, is involved in this case, is plainly frivolous. *Tinsley* v. *Anderson,* 171 U. S. 101.

The procedure, set up by the State of New York under the challenged sections of the Mental Hygiene Law for examination of commitment and hospital records upon the "order of a judge of a Court of Record", gives a privilege to petitioner which he has not even sought to avail himself of. The Mental Hygiene Law is an exercise of the police power uniformly recognized as belonging to the State in providing care and protection for the mentally sick, as well as protection and safety for the general public.

In any view of the complaint, no federally protected rights are involved.

3.

Although a district court may have valid jurisdiction over a case either by reason of diversity of citizenship or a federal question, it has discretion in certain situations to determine whether it should accept that jurisdiction.

> "Equitable relief may be granted only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.' Considering that '[f]ew public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,' the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. Whatever rights appellee may have are to be pursued through the state courts." *Alabama Public Service Commission* v. *Southern Ry.*, 341 U. S. 341, 349-50 (1951).

In Hawks v. *Hamill*, 288 U. S. 52, at page 61, Mr. Justice Cardozo said:

> "Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers acting *colore officii* in a conscientious endeavor to fulfill their duty to the state."

It was held in *Miller* v. *Director*, 146 F. Supp. 674 (S. D., N. Y. 1957), aff'd, 243 F. 2d 527 (C. A., 2nd Circ., 1957), that, apart from the general policies upon which the doctrine of exhaustion of state remedies is based, there are a number which are peculiarly applicable to the mental patient situation, and which hold that if the State has

provided adequate legislation for its function as *parens patriae* in relation to the mentally sick within its borders, and has provided protection for the individual involved, then the federal courts should not obstruct the administration of such State laws. *In re Huse*, 79 F. 305, 306 (C.C.A. 9, 1897); *Hall* v. *Verdel*, 40 F. Supp. 941 (W. D. Va., 1941); *In re Ryan*, 47 F. Supp. 10 (E. D. Pa., 1942); *Ex parte Moore*, 43 F. Supp. 886 (D. Oregon, 1942).

4.

Since the New York Courts are the courts best qualified to interpret the acts of its legislature and to determine the propriety of interference by injunction with the enforcement of its Mental Hygiene Law, it is clear that Judge Ryan had the power, without convening a three-judge court, to ascertain whether a substantial federal question was presented, and to dismiss the petitioner's complaint for want of jurisdiction when it appeared to him that the question lacked the necessary substance. Nothing has been shown herein which would have justified the District Court in concluding that the New York Courts would disregard any right the petitioner has under the Federal Constitution or Civil Rights Acts, as amended.

In the instant case, the contention of the petitioner comes within the language of this Court in *Ex Parte Poresky*, 290 U. S. 30, at page 32, wherein, upon the authority of many cases, it was declared a question is unsubstantial when

> "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy".

Therefore, it is evident, that Judge Ryan acted correctly when he declined to convene a three-judge court to con-

sider the questions presented by the petitioner's complaint. *Stainback* v. *Mo Hock Ke Lok Po*, 336 U. S. 368; *Linehan* v. *Waterfront Commission of New York Harbor*, 116 Fed. Supp. 401 aff'd, 347 U. S. 439; *New Jersey Chiropractic Ass'n* v. *State Board*, 79 Fed. Supp. 327.

CONCLUSION

Since no substantial federal question is presented, this Court should deny the petitioner's motions for leave to file a petition for a writ of certiorari and a writ of mandamus.

Dated: New York, N. Y., May 8, 1958.

Respectfully submitted,

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